

EXHIBIT 5

1 WINSTON & STRAWN LLP
2 ROLF S. WOOLNER, State Bar No. 143127
3 HANNAH L. BLUMENSTIEL, State Bar No. 214842
4 101 California St., Ste. 3900
5 San Francisco, CA 94111
Telephone: (415) 591-1000
Facsimile: (415) 591-1400
Email: rwoolner@winston.com
Email: hblumenstiel@winston.com

6 MacCONAGHY & BARNIER, PLC
7 JOHN H. MacCONAGHY, State Bar No. 83684
8 645 First St. West
9 Sonoma, California 95476
Telephone: (707) 935-3205
Facsimile: (707) 935-7051
Email: macclaw@macbarlaw.com

10 Attorneys for Plaintiff
OFFICIAL COMMITTEE OF UNSECURED CREDITORS

12 UNITED STATES BANKRUPTCY COURT
13 NORTHERN DISTRICT OF CALIFORNIA

20 UNSECURED CREDITORS OF THE)
ESTATE OF THE LEGACY ESTATE)
GROUP, LLC,)
21 Plaintiff,)
)
22 v)
)
23)
JOHN M. BRYAN, et al,)
24)
)
25 Defendants.)
)
26 AND RELATED CROSS-CLAIM)
)

**NOTICE OF EVIDENTIARY
HEARING ON MOTION TO
CERTIFY CASE TO DISTRICT
COURT FOR JURY TRIAL**

Date: 9/27/2007
Time: 10:00 a.m.
Santa Rosa Courtroom

1 **NOTICE IS HEREBY GIVEN** that on **September 27, 2007 at 10:00 a.m.**, in the
2 courtroom of the Hon. Alan Jaroslovsky, United States Bankruptcy Court, 99 South E. St. Santa
3 Rosa, CA, an evidentiary hearing will be held on the Motion to Certify Case to District Court for
4 Jury Trial as to the Defendant John and Florence Bryan Trust. This hearing is held pursuant to
5 that certain "Memorandum re Motion to Certify Case to District Court for Jury Trial" entered by
6 this Court on March 28, 2007.

7 Dated: September 3, 2007

Winston & Strawn, LLP

8 and

9 MacConaghy & Barnier, PLC

10 /s/ John H. MacConaghy

11 John H. MacConaghy
12 Attorneys for Plaintiff

EXHIBIT 6

1 **WINSTON & STRAWN LLP**
 2 ROLF S. WOOLNER (CA SBN: 143127)
 3 HANNAH L. BLUMENSTIEL (CA SBN: 214842)
 4 KIMBERLY S. MORRIS (CA SBN: 249933)
 5 101 California Street, Suite 3900
 6 San Francisco, California 94111-5894
 7 Telephone: (415) 591-1000
 8 Facsimile: (415) 591-1400
 9 Email: rwoolner@winston.com
 10 Email: hblumenstiel@winston.com
 11 Email: kmorris@winston.com

12 **MacCONAGHY & BARNIER, PLC**
 13 JOHN H. MacCONAGHY (CA SBN: 83684)
 14 645 First Street West, Suite D
 15 Sonoma, California 95476
 16 Telephone: (707) 935-3205
 17 Facsimile: (707) 935-7051
 18 Email: macclaw@macbarlaw.com

19 Co-Counsel for Plaintiff, The Official Committee of
 20 Unsecured Creditors

21 **UNITED STATES BANKRUPTCY COURT**
 22 **NORTHERN DISTRICT OF CALIFORNIA**
 23 **SANTA ROSA DIVISION**

24 In re:

25 THE LEGACY ESTATE GROUP, LLC, a
 26 California Limited Liability Company, formerly
 27 doing business as FREEMARK ABBEY WINERY,
 28 BYRON VINEYARD & WINERY, AND
 ARROWOOD VINEYARD & WINERY,

Debtor.

29 OFFICIAL COMMITTEE OF UNSECURED
 30 CREDITORS OF THE LEGACY ESTATE
 31 GROUP, LLC,

32 Plaintiff,

33 v.

34 JOHN M. BRYAN, JOHN M. AND FLORENCE
 35 E. BRYAN TRUST, J.M. BRYAN FAMILY
 36 TRUST, KULWINDER SIDHU, DEVINDER
 37 SIDHU, PACIFIC PARAGON INVESTMENT
 38 FUND LTD., a British Columbia company,
 39 HARRY CHEW, and AIC CAPITAL PARTNERS,
 40 LLC, a California limited liability company,

41 Defendants.

42 **Case No. 05-14659**

43 Chapter 11

44 Adversary Proceeding No. 06-01173

45 **PLAINTIFF'S BRIEF IN SUPPORT OF A**
 46 **JUDICIAL DETERMINATION THAT**
 47 **THE JOHN M. AND FLORENCE E.**
 48 **BRYAN TRUST HAS WAIVED ITS**
 49 **RIGHT TO A JURY TRIAL**

50 **Hearing Date: September 27, 2007**
 51 **Hearing Time: 10:00 a.m.**
 52 **Santa Rosa Courtroom**

53 **Hon. Alan Jaroslovsky**

1 JOHN M. BRYAN, JOHN M. AND FLORENCE
 2 E. BRYAN TRUST, J.M. BRYAN FAMILY
 3 TRUST,

4 Defendants/Cross-Claimants,

5 v.

6 KULWINDER SIDHU, et al.,

7 Defendants/Cross-Defendants.

8 The Official Committee of Unsecured Creditors ("Committee") appointed in the Chapter 11
 9 case of The Legacy Estate Group LLC ("Legacy") submits this brief in support of a judicial
 10 determination that defendant The John M. and Florence E. Bryan Trust ("JFB Trust") has waived its
 11 right to a jury trial.

12 **I. Summary of Argument**

13 A creditor who files a claim against a bankruptcy estate submits to the equitable jurisdiction
 14 of the bankruptcy court and relinquishes any right to a jury trial. *Langenkamp v. Culp*, 498 U.S. 42,
 15 44-45 (1990); *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 58-59 (1988); *Katchen v. Landy*, 382
 16 U.S. 323, 336 (1966). Accordingly, this Court has stricken the jury trial demands of John M. Bryan
 17 ("Mr. Bryan") and the J.M. Bryan Family Trust, both of which asserted claims against the Legacy
 18 bankruptcy estate. Order Denying Motion to Certify to District Court and Striking Demand for Jury
 19 Trial as to Defendants John M. Bryan and the John M. Bryan Family Trust, dated June 27, 2007.
 20 Although the JFB Trust has not explicitly asserted a claim against Legacy, the JFB Trust is the alter
 21 ego of Mr. Bryan as a matter of law. Because this court has already determined that Mr. Bryan
 22 waived his right to a jury trial, the same conclusion applies to the JFB Trust.

23 The JFB Trust is a revocable trust, of which Mr. Bryan is the primary settlor, trustee, and
 24 beneficiary.¹ See John M. and Florence E. Bryan Trust Amended and Restated Trust Instrument
 25 ("Trust Instrument"), attached as Exhibit A to the Morris Declaration In Support of Plaintiff's Brief

26
 27 ¹ The Committee first became aware that the JFB Trust was a revocable trust on July 20, 2007, when
 28 the Bryan Defendants disclosed that fact in related proceedings before the District Court. See Reply
 Of John M. Bryan, the John M. and Florence E. Bryan Trust and J.M. Bryan Family Trust In Support
 Of Motion To Withdraw Reference at 5.

1 In Support Of A Judicial Determination That The John M. and Florence E. Bryan Trust Has Waived
 2 Its Right To A Jury Trial ("Morris Decl."). Under the California Probate Code, when a trust is
 3 revocable – that is, when a settlor retains the power to revoke the trust in whole or in part – the trust
 4 property remains subject to the claims of the settlor's own creditors, and the settlor also retains the
 5 power to enforce the rights of the trust, superseding any powers or rights of the named trustee and
 6 beneficiaries.

7 The Trust Instrument reserves to Mr. Bryan, as settlor, complete ownership and control of the
 8 JFB Trust property, and full power to enforce the rights of the JFB Trust. This fact alone establishes
 9 that the JFB Trust cannot assert a jury trial right, because Mr. Bryan, the settlor of that trust, waived
 10 his jury trial right.

11 Moreover, in deposition testimony in this action, Mr. Bryan has admitted that he established
 12 the JFB Trust solely for estate planning purposes in lieu of a will, and has always treated JFB Trust
 13 property as his own, without regard for the separate existence of the trust. The JFB Trust has waived
 14 any possible jury trial right as a matter of law.

15 **II. Factual Background**

16 John M. Bryan and Florence E. Bryan are the settlors of the JFB Trust. Morris Decl. Exhibit
 17 A, Trust Instrument at 1-1. John Bryan established the JFB Trust on August 19, 1991, in lieu of a
 18 will, to dispose of his estate and to "simplify an estate settlement." John Bryan Deposition
 19 Transcript ("J. Bryan Dep. Trans.") at 38:11-14, attached as Exhibit B to the Morris Decl.; *see also*
 20 Morris Decl. Exhibit A, Trust Instrument at 1-1. In establishing the JFB Trust, Mr. Bryan conveyed
 21 to the trust all of the assets and property that he owned at that time. Morris Decl. Exhibit A, Trust
 22 Instrument at 1-2. The JFB Trust is a "present interest trust" that holds substantially all of Mr.
 23 Bryan's personal assets, including his personal residences. Morris Decl. Exhibit B, J. Bryan Dep.
 24 Trans. at 30:8-10. In fact, Mr. Bryan is not aware of *any* assets belonging to him that are not held in
 25 the JFB Trust. *Id.* at 31:14-17.

26 Under the express terms of the Trust Instrument, John or Florence Bryan, acting alone or
 27 together, can revoke the trust at any time and receive all remaining trust property from the trustees.
 28 Morris Decl. Exhibit A, Trust Instrument at 2-1. John Bryan is also a trustee of the JFB Trust, with

1 the power to "manage the trust assets acting alone." *Id.* at 7-4.² Despite the fact that the JFB Trust
 2 holds substantially all of Mr. Bryan's property interests, Mr. Bryan admits that he did not read nor
 3 have knowledge of the Trust Instrument terms, and used the assets in the JFB Trust in the same
 4 manner as he would have had the assets not been subject to the trust. Morris Decl. Exhibit B, J.
 5 Bryan Dep. Trans. at 33:2-6, 42:24-43:1.

6 Prior to the March 2005 leveraged buyout transaction ("LBO transaction") at issue in this
 7 action, the JFB Trust, at Mr. Bryan's direction, held Legacy membership interests as trust property.
 8 *See* First Amended Complaint for Damages and Declaratory and Equitable Relief, Including
 9 Subordination Of Certain Claims, dated November 22, 2006 ("First Amended Complaint") at ¶ 8;
 10 Answer of Defendants John M. Bryan, John M. and Florence E Bryan Trust, J.M. Bryan Family
 11 Trust To Plaintiff's First Amended Complaint, dated January 5, 2007 ("Bryan Answer") at ¶ 8. In
 12 March 2005, the JFB Trust, at Mr. Bryan's direction, sold that trust property to Connaught. First
 13 Amended Complaint at ¶ 9; Bryan Answer at ¶ 9; *see also* Morris Decl. Exhibit B, J. Bryan Dep.
 14 Trans. at 149:16-150:14. In the LBO transaction, the JFB Trust received cash and an interest in a
 15 promissory note, which the Committee seeks to recover for the benefit of the estate. *Id.*

16 Mr. Bryan has directly and indirectly asserted numerous claims against the Legacy
 17 bankruptcy estate, several of which have already been paid by the Legacy estate. For example:

18 • Mr. Bryan signed and filed claim #126 in the stated amount of \$1,345,444.89, seeking
 19 retrospective indemnification for payments Mr. Bryan made under a guaranty issued to Red Barn
 20 Ranch in connection with the Red Barn grape purchase contract. Legacy has paid this claim in full,
 21 in cash, pursuant to orders of the Court.

22 • Mr. Bryan signed and filed claim #122 in the stated amount of \$20,181,673.85,
 23 seeking prospective indemnification with respect to the Red Barn Ranch guaranty. After mediation
 24 and approval of the settlement, Legacy paid the entire compromised amount of this claim in cash,
 25 with a \$750,000 payment to Red Barn.

27 ²Although the JFB Trust has a nominal co-trustee, Alan R. Brudos (who works for Mr. Bryan), Mr.
 28 Bryan admits that Mr. Brudos would not make any decision with respect to the trust or its assets
 without first consulting with Mr. Bryan. Morris Decl. Exhibit B, J. Bryan Dep. Trans. at 43:13-17.

1 • Mr. Bryan signed and filed claim #145 on behalf of Sycamore Vineyards, a California
 2 general partnership ("Sycamore"), in the stated amount of \$497,115.08, for the purchase price of
 3 grapes delivered by Sycamore. Legacy has paid this claim in full, in cash, pursuant to orders of the
 4 Court.

5 Sycamore's general partners are John M. Bryan and Florence E. Bryan.³ Mr. Bryan's general
 6 partnership interests in Sycamore are held by the JFB Trust. Morris Decl. Exhibit B, J. Bryan Dep.
 7 Trans. at 30:8-10, 31:14-17.

8 Thus, Mr. Bryan has enjoyed substantial monetary benefits from his claims against Legacy,
 9 and so has the JFB Trust.

10 **III. Argument**

11 A. Mr. Bryan's Jury Trial Waiver Must Be Imputed To The JFB Trust Under California
 12 Probate Law

13 As its settlor, Mr. Bryan has complete control over the JFB Trust, and his conduct with
 14 respect to the Legacy bankruptcy estate binds the JFB Trust. California law allows courts to look
 15 beyond a trust to a settlor who retains the power to revoke the trust. California Probate Code
 16 § 15800 provides that the person holding the power to revoke a trust has the rights of beneficiaries
 17 under the Probate Code:

18 Except to the extent that the trust instrument otherwise provides or
 19 where the joint action of the settlor and all beneficiaries is required,
 20 during the time that a trust is revocable and the person holding the
 21 power to revoke the trust is competent:

22 (a) The person holding the power to revoke, and not the beneficiary,
 23 has the rights afforded beneficiaries under this division.
 24
 25 (b) The duties of the trustee are owed to the person holding the power
 26 to revoke.

27 ³ Declaration of John M. Bryan in Support of Supplemental Brief to Certify Proceeding to District
 28 Court for Trial by Jury Pursuant to Bankruptcy Local Rule 9015-2 ("J. Bryan Declaration"), ¶ 2,
 attached as Exhibit C to the Morris Decl.; Sycamore Vineyards (Partnership Agreement) dated
 August 16, 1976, *passim*, attached to the J. Bryan Declaration as Exhibit A.

1 The Law Revision Commission Comments to Section 15800 state that this section "recognizes that
 2 the holder of a power of revocation is in control of the trust." Among the rights afforded by statute
 3 to trust beneficiaries, and therefore to settlors of revocable trusts, is the right to petition a court to
 4 enforce "the existence or nonexistence of *any* immunity, power, privilege, duty or right." Cal. Prob.
 5 Code § 17200(b)(2) (emphasis added). The right to preserve, enforce or waive a jury trial right on
 6 behalf of the JFB Trust is thus among the rights held by Mr. Bryan, as settlor of the revocable JFB
 7 Trust.

8 Furthermore, trust assets remain the property of the settlor, not the separate property of the
 9 trust, for purposes of debtor-creditor relations. California Probate Code § 18200 provides: "If the
 10 settlor retains the power to revoke the trust in whole or in part, the trust property is subject to the
 11 claims of creditors of the settlor to the extent of the power of revocation during the lifetime of the
 12 settlor."

13 California bankruptcy courts routinely apply sections 18200 and 15800 of the Probate Code
 14 to find that the assets of revocable trusts constitute property of the settlor's bankruptcy estate under
 15 11 U.S.C. § 541: "Under California law, when the settlor of a trust retains the power to revoke a
 16 trust, the trust res remains the settlor's property subject to his creditor's claims." *In re Ralbert*
 17 *Brooks-Hamilton v. City of Oakland* (*In re Brooks-Hamilton*), 348 B.R. 512, 519 (Bankr. N.D.Cal.
 18 2006); *Ohanian v. Irwin* (*In re Irwin*), 338 B.R. 839, 852 (E.D. Cal. 2006) ("Debtor's interest as a
 19 trustor and beneficiary under the Living Trust, among other things, all became property of the
 20 bankruptcy estate pursuant to 11 U.S.C. § 541(a) upon the filing of Debtor's petition"). If the
 21 Committee secures a judgment against Mr. Bryan in this action, the Committee may look to the
 22 assets of the JFB Trust to satisfy that claim, because the JFB Trust is revocable and Mr. Bryan is its
 23 settlor. For the same reason, any rights asserted or waived by Mr. Bryan in this action must be
 24 considered in determining the rights of the trust, because there is no functional distinction between a
 25 living settlor and his revocable trust as a matter of law.

26 In short, the Probate Code and applicable case law establish that a settlor retains all powers
 27 and rights with respect to trust assets. Because Mr. Bryan waived his right to a jury trial by filing
 28 claims against the Legacy bankruptcy estate, the JFB Trust has also waived any right to a jury trial.

1 B. The JFB Trust Is An Alter Ego Of John Bryan

2 In addressing California entities, federal courts enforce the alter ego principles of California
 3 state law. *Wolfe v. U.S.*, 798 F.2d 1241, 1244 (9th Cir. 1986). An alter ego may be deemed to exist
 4 when an entity is not, in fact, independent of an affiliated individual. *E.g., Cohen v. U.S.*, No. 96-
 5 5880, 1998 WL 953979, at *6 (C.D.Cal. Mar. 9, 1998). The court will pierce the entity's veil, and
 6 look behind its organizational form, if honoring the entity's separate existence would produce an
 7 inequitable result. *Id.* The alter ego principle applies to trusts in the same manner as to
 8 corporations. *Id.*; *see also Brownfield Investment Corp. v. U.S.*, No. 89-4257, 1992 WL 345665, at
 9 *4 (N.D.Ca. June 29, 2002); *Morley v. Malouf*, 88 Cal. App. 2d 680 (1948). Where a trust is shown
 10 to be the alter ego of an individual, the trust is not regarded a separate legal entity. *Cohen*, 1998 WL
 11 953979, at *6.

12 The JFB Trust is the alter ego of Mr. Bryan as a matter of law. As settlor of the revocable
 13 JFB Trust, Mr. Bryan exercises complete dominion and control over the trust and its assets. The
 14 California Probate Code and related case law establish that the JFB Trust does not function as a
 15 separate legal entity from Mr. Bryan during his lifetime. Not only is property of a revocable trust
 16 deemed property of the settler of that trust, but all rights under the Probate Code normally afforded
 17 to beneficiaries of a trust are reserved for the person with the power to revoke the trust. *See*
 18 California Probate Code § 15800 (granting the powers normally afforded to beneficiaries of a trust
 19 under the Probate Code to the person holding the power to revoke the trust); California Probate Code
 20 § 18200 (providing that trust property is subject to claims by creditors of the settler of a revocable
 21 trust).

22 Furthermore, Mr. Bryan has expressly admitted that he created the JFB Trust as a convenient
 23 vehicle to hold assets, established in lieu of a will to dispose of his and his wife's property, and that
 24 he has disregarded the existence of the JFB Trust in conducting his business affairs. Morris Decl.
 25 Exhibit B, J. Bryan Dep. Trans. at 30:8-10; 33:2-6, 38:11-14, 42:24-43:1. Having structured the JFB
 26 Trust to maintain complete control of its assets, and having ignored the separateness of the JFB
 27 Trust, Mr. Bryan may not hide behind that entity to escape the jurisdiction of this court.

Winston & Strawn LLP
 101 California Street
 San Francisco, CA 94111-5894

1 1. Elements of the Alter Ego Relationship

2 Under California law, the alter ego doctrine applies where (a) there is such a unity of interest
 3 and ownership between an individual and a trust that the two do not function as separate entities, and
 4 (b) honoring the trust's separate existence would lead to an inequitable result. *Cohen*, 1998 WL
 5 953979, at *6. When an entity is used merely as an instrumentality through which an individual, for
 6 convenience, conducts his affairs, the fiction of separateness need not be upheld if it would allow the
 7 individual to evade the equitable consequences of his own conduct. *See Wilson v. Stearns, et al.*,
 8 123 Cal. App. 2d 472, 486 (1954). Alter ego doctrine does not depend on any showing of fraudulent
 9 or improper purpose. It is enough that recognizing the trust and the individual as separate entities
 10 would result in injustice. *Id.* In such circumstances "all of the authorities, not only equity but the
 11 law itself, would hold such a[n] [entity] bound as the [individual] might be bound, or conversely,
 12 hold the [individual] bound by acts which bound his [entity]." *Ukegawa Brothers v. Agricultural*
 13 *Labor Relations Board, et al.*, 212 Cal. App. 3d 1314, 1323 (1989).

14 2. The Settlor of a Revocable California Trust is the Alter Ego of the Trust

15 Under California law, the settlor of a revocable trust is the alter ego of the trust for debtor-
 16 creditor purposes. *E.g., Cadle Company v. Harvey*, 83 Cal. App. 4th 927 (2000) (*held*, settlor's
 17 guarantee of a loan to an inter vivos revocable trust was ineffective because the settlor and trust are
 18 in fact one entity); *Torrey Pines Bank v. Hoffman*, 231 Cal. App. 3d 308, 316 (1991) (same; "these
 19 [settlor] guarantors, as persons who created, administered and benefited from the trust, were the alter
 20 ego of the trustees as principal obligors").

21 In *Cadle*, the court reviewed the enforceability of a loan guarantee signed by the settlor and
 22 trustee of an inter vivos revocable trust. The trust itself was the primary obligor on the loan. The
 23 court held that because the trust was revocable and thus remained under the complete control of the
 24 settlor, the trust and the settlor were one and the same. *Cadle* at 932-33. Therefore, the lender's
 25 ability to pursue the settlor-guarantor for a deficiency judgment must be assessed by treating the
 26 settlor-guarantor as the primary debtor on the loan. Because the obligations of the trust, as principal
 27 debtor, were limited by the state's anti-deficiency laws, the court held that the settlor was protected
 28 by the same limitations. *Id.* Moreover, the settlor's purported waiver of anti-deficiency protections

1 was ineffective, because the settlor and the trust were one and the same, and the principal debtor (the
 2 trust) could not waive those protections. *Id.* at 934.

3 The court in *Cadle* followed *Torrey Pines*, which also held that, because the trust was
 4 revocable, "the individual [settlor] guarantors were alter egos of the trustees and principal obligors."
 5 *Torrey Pines*, 231 Cal. App. 3d at 316. Notably, neither the *Cadle* nor the *Torrey Pines* decisions
 6 even mentioned the sections of the Probate Code governing the settlor's control over property of a
 7 revocable trust. The treatment of revocable trusts as functionally identical to the settlor of that trust
 8 is so well established that it is reflected in debtor-creditor case law as well as decisions interpreting
 9 the Probate Code.

10 Although in cases such as *Cadle* and *Torrey Pines* the alter ego principle protects both the
 11 settlor and the trust by treating them as one, the same principle may expose the settlor to liability, as
 12 in *In re Brooks-Hamilton*, 348 B.R. 512 (Bankr.N.D.Ca. 2006), and *In re Irwin*, 338 B.R. 839 (E.D.
 13 Cal. 2006), discussed above. The settlor of a revocable trust must accept the burdens as well as the
 14 benefits of retaining control over trust property. That rule binds Mr. Bryan and the JFB Trust here.

15

16 3. Mr. Bryan And The JFB Trust Are One and the Same Entity for Purposes of
This Court's Equitable Jurisdiction

17 There can be no doubt that the JFB Trust and Mr. Bryan share a unity of interest. Mr. Bryan
 18 has testified under oath that the JFB Trust was established as a convenient way for Mr. Bryan to hold
 19 assets during his lifetime, and that substantially all of his assets are held by the JFB Trust. Morris
 20 Decl. Exhibit B, J. Bryan Dep. Trans. at 31:11-17, 38:11-17. Mr. Bryan continued to use and
 21 manage the trust assets in the same way as if the assets were held in his name only, and did not even
 22 read the Trust Instrument to see whether it affected the manner in which the JFB Trust was to be
 23 managed. *Id.* at 33:2-6, 42:24-43:1, 45:12-15; cf. Morris Decl. Exhibit A, Trust Instrument at 3-1.⁴
 24 Putting his property into the JFB Trust did not alter the manner in which Mr. Bryan used or viewed
 25 his assets.

26

27

28 4 Moreover, reinforcing his control over the trust and its assets, Mr. Bryan is not only the settlor of
 the JFB Trust, but also its trustee. Morris Decl. Exhibit A, Trust Instrument at 1-1.

1 Even if Mr. Bryan had not made himself the trustee of JFB Trust, and granted himself broad
 2 powers under the Trust Instrument, Mr. Bryan and the JFB Trust do not function as separate entities
 3 as a matter of law, because the JFB Trust is revocable and Mr. Bryan is its settlor. California
 4 Probate Code §§ 15800, 18200 (the settlor of a revocable trust retains all rights with respect to the
 5 trust); *see also Cadle*, 83 Cal. App. 4th 927; *Torrey Pines*, 231 Cal. App. 3d 308. These
 6 incontestable facts, and the manner in which Mr. Bryan controls the trust, make it clear that Mr.
 7 Bryan regards the JFB Trust's assets and interests as his own. This Court should not treat the JFB
 8 Trust any differently than Mr. Bryan himself has done.

9 Further, treating the JFB Trust and Mr. Bryan as separate entities would lead to an
 10 inequitable result. By asserting claims against Legacy, Mr. Bryan waived his right to a jury trial, as
 11 did the J.M. Bryan Family Trust – for which Mr. Bryan is a beneficiary and trustee, and with which
 12 he shares a unity of interest.⁵ All of the other parties to this litigation have waived their jury trial
 13 rights or have not contested the jurisdiction of this Court. If the Court were to treat Mr. Bryan and
 14 the JFB Trust as wholly distinct entities, this entire adversary proceeding would be tried before this
 15 Court, except that the claims against the JFB Trust would be tried by a separate tribunal. Such a
 16 result would not only waste judicial resources, but would undermine the equitable jurisdiction of the
 17 bankruptcy court by forcing the parties to litigate the same issues against the same real party in
 18 interest, Mr. Bryan, in two separate forums. *See* California Probate Code § 18200 (stating that trust
 19 property held in a revocable trust is subject to the claims of the settlor's creditors so long as the
 20 settlor has the power to revoke).

21 The Legacy bankruptcy estate has paid several of Mr. Bryan's claims. All of those payments
 22 (including the recovery on the claim of Sycamore Vineyards) also benefited the JFB Trust because
 23 substantially all of Mr. Bryan's assets (including his general partnership interests in Sycamore
 24 Vineyards) are held in that trust.

25
 26
 27 ⁵ As the Court is aware, the J.M. Bryan Family Trust (which has no jury trial right) and the JFB
 28 Trust (which asserts, but has not established, a jury trial right) were co-owners of Legacy equity
 interests and received the disputed proceeds from Legacy in the same way, in the same LBO
 Transaction. *See* First Amended Complaint at ¶ 9; Bryan Answer at ¶ 9.

1 Mr. Bryan and the JFB Trust share a unity of interest, and treating the two as separate entities
 2 would lead to an inequitable result. The JFB Trust therefore constitutes the alter ego of Mr. Bryan
 3 for purposes of this dispute. Mr. Bryan has waived his right to a jury trial, and his alter ego, the JFB
 4 Trust, is bound by that waiver. *See Ukegawa*, 212 Cal. App. 3d at 1323.

5

6 **IV. Conclusion**

7 This Court should reject Mr. Bryan's jury trial demand on behalf of the JFB Trust, and
 8 prevent Mr. Bryan's effort to circumvent the Court's equitable jurisdiction over this claim and these
 9 claimants.

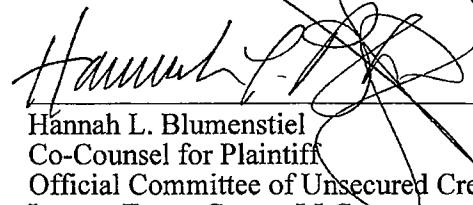
10

11 Dated: September 19, 2007

WINSTON & STRAWN LLP

12 and

13 **MACCONAGHY & BARNIER, PLC**

14 
 15 Hannah L. Blumenstiel
 16 Co-Counsel for Plaintiff
 17 Official Committee of Unsecured Creditors of The
 18 Legacy Estate Group, LLC

19

20

21

22

23

24

25

26

27

28